



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0340]

RIN 1625-AA00

Safety Zones; Safety Zones within the Captain of the Port New Orleans Zone; New Orleans to Baton Rouge, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary safety zones for multiple locations and dates within the Captain of the Port New Orleans' zone. These safety zones are necessary to protect persons and vessels from potential safety hazards associated with fireworks displays on or over federal waterways. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0340 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Lieutenant Commander (LCDR) James Gatz, Sector New Orleans, at (504) 365-2281 or James.C.Gatz@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM	Broadcast Notice to Mariners
CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
MSIB	Marine Safety Information Bulletin
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

The Coast Guard proposes establishment of temporary safety zones for the following upcoming fireworks displays:

(1) A corporate event scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on June 15, 2016. The fireworks barge will be positioned adjacent to the foot of Dumaine Street in New Orleans, LA, at approximate mile marker 94.5 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on April 18, 2016.

(2) The Llamasoft Convention scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on June 16, 2016. The fireworks barge will be positioned adjacent to Spanish Plaza in New Orleans, LA, at approximate mile marker 95.0 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on April 1, 2016.

(3) The U.S. Travel Association's "IPW" Conference scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on June 22, 2016. The fireworks barge will be positioned adjacent to Mardi Gras World in New Orleans, LA, at approximate mile marker 96.2 above Head

of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on April 1, 2016.

(4) The St. John the Baptist Parish Independence Day Celebration scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on June 30, 2016. The fireworks barge will be positioned adjacent to the Parish Courthouse in Edgard, LA, at approximate mile marker 138.0 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on March 15, 2016. This is an annually recurring event that is published in 33 CFR 165.801, Table 5, line no. 2. This year's occurrence is scheduled for a different date and location than currently listed in the CFR. Should a permanent change be necessary for this safety zone, we will include it in a future rulemaking proposing permanent updates to 33 CFR 165.801, Table 5.

(5) The L'Auberge Casino Independence Day Celebration scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on July 4, 2016. The fireworks barge will be positioned adjacent to the L'Auberge Casino in Baton Rouge, LA, at approximate mile marker 216.5 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on January 27, 2016. This is an annually-recurring event that is not currently published in Table 5 of 33 CFR 165.801. We plan to include it in a future rulemaking proposing permanent updates to 33 CFR 165.801, Table 5.

(6) The City of Mandeville Independence Day Celebration scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on July 4, 2016. The fireworks barge will be positioned adjacent to the Mandeville City Lakefront in Mandeville, LA, at approximate position 30° 21.200 N, 90° 04.500 W. The Coast Guard was notified about this event on March 14, 2016. A safety zone was established in 2015 for a similar event. Based on the history of this event and

safety zone need, we are considering making this safety zone a permanent recurring regulation, and may include it in a future rulemaking proposing permanent updates to 33 CFR 165.801, Table 5.

(7) The American Psychological Association Convention scheduled for one hour in the evening between 6:00 p.m. and 11:00 p.m. on September 23, 2016. The fireworks barge will be positioned adjacent to Dumaine Street in New Orleans, LA, at approximate mile marker 94.5 above Head of Passes on the Lower Mississippi River. The Coast Guard was notified about this event on February 24, 2016.

Due to the risks associated with aerial barge-based fireworks displays taking place on and over these sections of navigable waterways, the proposed safety zones are needed to protect persons and property. The Coast Guard would notify the public and maritime community of the proposed safety zones and their respective enforcement periods via broadcast notices to mariners (BNM). The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The Coast Guard proposes to establish multiple temporary safety zones within the Captain of the Port New Orleans (COTP) Zone on several different dates and in several different locations. The safety zones to be established would be enforced on the respective dates listed above and in the proposed regulatory text as provided at the end of this document. Each safety zone will be limited to a duration of one hour, and will occur during the evenings on the dates specified, between the hours of 6:00 p.m. and 11:00 p.m. Entry into these safety zones is prohibited unless permission has been granted by the COTP New Orleans, or a designated representative.

The COTP New Orleans will inform the public through BNMs of the enforcement period

for each safety zone as well as any changes in the planned schedule. Mariners and other members of the public may also contact Coast Guard Sector New Orleans Command Center to inquire about the status of the safety zone by calling (504) 365-2200.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

Six of these proposed safety zones would be no greater than 1 river mile in length and would restrict navigation on the Lower Mississippi River for no longer than one hour each. The remaining proposed safety zone would be limited to a circular area 1200 feet in diameter located along the North Shore of Lake Pontchartrain, in an area with ample room for other traffic to navigate around the safety zone, and would be in effect for no longer than one hour. Due to the limited scope and short duration of each proposed safety zone, the impacts on routine navigation are expected to be minimal. Additionally, the Coast Guard would issue maritime notices widely available to waterway users and deviation from the proposed safety zones may be requested and

would be considered on a case-by-case basis.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zones may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule proposes to establish seven temporary safety zones within the Captain of the Port New Orleans zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and

provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T08-0340 to read as follows:

§ 165.T08-0340 Safety Zones; Captain of the Port New Orleans Zone; New Orleans to Baton Rouge, LA

(a) Safety zones. The following areas are safety zones:

(1) **Fireworks display, New Orleans, LA.** (i) Location. All waters of the Lower Mississippi River from mile marker 94.0 to mile marker 95.0 Above Head of Passes.

(ii) Effective date and time. June 15, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(2) **LLamasoft Convention fireworks display, New Orleans, LA.** (i) Location. All waters of the Lower Mississippi River from mile marker 94.5 to mile marker 95.5 Above Head of Passes.

(ii) Effective date and time. June 16, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(3) **U.S. Travel Association fireworks display, New Orleans, LA.** (i) Location. All waters of the Lower Mississippi River from mile marker 95.7 to mile marker 96.7 Above Head of Passes.

(ii) Effective date and time. June 22, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(4) **St. John the Baptist Independence Day Celebration fireworks display, Edgard, LA.** (i) Location. All waters of the Lower Mississippi River from mile marker 137.5 to mile marker 138.5 Above Head of Passes.

(ii) Effective date and time. June 30, 2016, for one hour in the evening between the hours of

6:00 p.m. and 11:00 p.m.

(5) **L'Auberge Casino Independence Day Celebration fireworks display,**

Baton Rouge, LA. (i) Location. All waters of the Lower Mississippi River from mile marker 216.0 to mile 217.0 Above Head of Passes.

(ii) Effective date and time. July 4, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(6) **City of Mandeville Independence Day Celebration fireworks display,**

Mandeville, LA. (i) Location. All waters of Lake Pontchartrain extending 600 feet in any direction from 30° 21.200N, 090° 04.500W.

(ii) Effective date and time. July 4, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(7) **American Psychological Association Convention fireworks display,**

New Orleans, LA. (i) Location. All waters of the Lower Mississippi River from mile marker 94.0 to mile marker 95.0 Above Head of Passes.

(ii) Effective date and time. September 23, 2016, for one hour in the evening between the hours of 6:00 p.m. and 11:00 p.m.

(b) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into these zones is prohibited unless specifically authorized by the Captain of the Port (COTP) New Orleans or designated personnel. Designated personnel include commissioned, warrant and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans. For each event, the COTP New Orleans designated representative will be announced via Marine Safety Information Bulletin and Notice to Mariners.

(2) Vessels requiring deviation from this rule must request permission from the COTP New Orleans or a COTP New Orleans designated representative. They may be contacted via the U.S. Coast Guard Sector New Orleans Command Center, via VHF-FM Channel 16 or by phone at (504) 365-2200.

(3) Persons and vessels permitted to deviate from this safety zone regulation and enter the restricted areas must transit at the slowest safe speed and comply with all lawful directions issued by the COTP New Orleans or the designated representative.

(c) Information Broadcasts. The COTP New Orleans or designated representative will inform the public through broadcast notices to mariners of the enforcement periods for the safety zones as well as any changes in the planned schedules.

Dated: May 13, 2016

P.C. SCHIFFLIN,
Captain, U.S. Coast Guard,
Captain of the Port New Orleans.

[FR Doc. 2016-13119 Filed: 6/2/2016 8:45 am; Publication Date: 6/3/2016]